

Proposed Tag

WASHINGTON, D. C. 20505

Office of Legislative Counsel

OLC 78-1428/c
26 April 1978

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Frey:

Enclosed is a proposed report to Chairman Zablocki, House Committee on International Relations, in response to a request for our recommendations on H.R. 9775 and H.R. 10139, the Omnibus Anti-Terrorism Act of 1977.

Advice is requested as to whether there is any objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

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Acting Legislative Counsel

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Enclosure

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Washington, D.C. 20505

Honorable Clement J. Zablocki, Chairman
Committee on International Relations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This letter is in response to your request for our views and recommendations on H.R. 9775 and H.R. 10139, the Omnibus Anti-Terrorism Act of 1977. These bills would effect organizational changes within the Federal Government to strengthen Federal programs and policies for combatting international and domestic terrorism.

Nearly all, and any potential, problems or difficulties raised by these draft bills do not appear to be of direct concern to this Agency, but more directly affect the interests of the Justice and State Departments. One issue that is of direct interest to the Director of Central Intelligence, however, is found in section 104 of H.R. 10139 and section 304 of H.R. 9775. These sections would require the President to provide an unclassified report to the Congress following any terrorist act affecting U.S. citizens. Information that would "directly threaten" or "seriously compromise" sources and methods may be withheld from the unclassified report, and instead reported in classified form to the House Permanent Select Committee on Intelligence and Senate Select Committee on Intelligence. It is these provisions that raise a potential difficulty with respect to the protection of intelligence sources and methods, a responsibility charged to the Director of Central Intelligence by statute (50 U.S.C. 403(d)(3)). The exemption in the bills is simply too narrow. Any attempt to characterize information as posing a "serious" threat--as opposed to a "non-serious"--or a "direct"--as opposed to "indirect"--threat would be, at best, artificial. In reality intelligence sources and methods might be just as seriously affected or compromised by an indirect threat or danger as by public disclosure of information that might directly threaten or seriously compromise sources and methods.

Deletion of the words "directly" and "seriously" from subsections 104(c) of H.R. 10139 and 304(c) of H.R. 9775 would remedy this defect and would avoid any potential difficulty with this statutory responsibility to protect intelligence sources and methods. The subsections would then read as follows:

"(c) When the disclosure of information required in section 104(a) [or 304(a), as appropriate] would threaten the safety of an informant or confidential source or compromise a covert information gathering program or source of information, the information may be withheld from the unclassified report. Such information shall instead be reported in classified form to the Senate and House Intelligence Committees."

The Office of Management and Budget has advised there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Frank Carlucci